**U.S. Department of Justice**

Office of Legal Counsel

Office of the Assistant Attorney General

*Washington, D.C. 20530*

September 16, 2019

Pat A. Cipollone
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Cipollone:

On August 14, 2019, the Committee on the Judiciary of the House of Representatives issued a subpoena seeking to compel Rick Dearborn, former Assistant to the President and Deputy Chief of Staff for Policy Implementation, to testify on September 17 at a hearing entitled "Presidential Obstruction of Justice and Abuse of Power." You have asked whether the Committee may compel Mr. Dearborn to testify. We conclude that he is absolutely immune from compelled congressional testimony in his capacity as a former senior adviser to the President.

At the time of the service of the subpoena, the Committee Chairman, Jerrold Nadler, announced that Mr. Dearborn had been subpoenaed because he was "prominently featured" in volume II of the report issued by Special Counsel Robert S. Mueller, III, particularly in descriptions of President Trump allegedly "directing then-White House Counsel Don McGahn to fire the Special Counsel." Press Release, Rep. Jerrold Nadler, House Judiciary Committee Subpoenas Two Witnesses to Trump Crimes Detailed in Mueller Report (Aug. 15, 2019); *see also* Press Release, Comm. on the Judiciary, House Judiciary to Consider Procedures Regarding Whether to Recommend Impeachment (Sept. 9, 2019) (stating that the Committee subpoenaed Mr. Dearborn in connection with the President's alleged "efforts to obstruct the Special Counsel's investigation"). Chairman Nadler's announcement included a background section that specifically identified the actions of Mr. Dearborn during his time at the White House that were of interest to the Committee. The subpoena plainly seeks testimony concerning matters occurring during and relating to Mr. Dearborn's service as a presidential aide, specifically the matters addressed in volume II of the report issued by the Special Counsel.

The Committee's subpoena is one of several that House committees have recently issued to current and former senior presidential aides. The Department of Justice has for decades taken the position, and this Office recently reaffirmed, that "Congress may not constitutionally compel the President's senior advisers to testify about their official duties." *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *1 (May 20, 2019) ("*Immunity of the Former Counsel*"). This testimonial immunity is rooted in the separation of powers and derives from the President's status as the head of a separate, co-equal branch of government. *See id.* at *3–7. Because the President's closest advisers serve as his alter egos, compelling them to testify would undercut the "independence and autonomy" of the Presidency, *id.* at *4, and interfere directly with the President's ability to faithfully discharge his

responsibilities. Absent immunity, "congressional committees could wield their compulsory power to attempt to supervise the President's actions, or to harass those advisers in an effort to influence their conduct, retaliate for actions the committee disliked, or embarrass and weaken the President for partisan gain." *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach From Congressional Subpoena*, 38 Op. O.L.C. __, *3 (July 15, 2014) ("*Immunity of the Assistant to the President*"). Congressional questioning of the President's senior advisers would also undermine the independence and candor of executive branch deliberations. *See Immunity of the Former Counsel*, 43 Op. O.L.C. at *5–7. Administrations of both political parties have insisted on the immunity of senior presidential advisers, which is critical to protect the institution of the Presidency. *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999) (A.G. Reno).

Mr. Dearborn qualifies as a senior presidential adviser entitled to immunity. Our opinions have recognized that this immunity extends to "those trusted members of the President's inner circle 'who customarily meet with the President on a regular or frequent basis,' and upon whom the President relies directly for candid and sound advice." *Immunity of the Assistant to the President*, 38 Op. O.L.C. at *2 (quoting Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* at 7 (Feb. 5, 1971)). Your office has informed us that Mr. Dearborn was a high-level policy adviser to the President. He came to the White House after serving as executive director of the President-elect's transition team. In his capacity as Deputy Chief of Staff for Policy Implementation, Mr. Dearborn oversaw several components of the Executive Office of the President, including the Office of Legislative Affairs, and directly advised the President on congressional relations and a wide range of policy areas. In addition, we understand that Mr. Dearborn met with the President on a daily basis, maintained an office in the West Wing, and traveled with the President multiple times. In view of Mr. Dearborn's responsibilities and his direct relationship with the President, we believe that he satisfies the criteria our Office has applied in assessing whether presidential aides are immune from compelled congressional testimony.

In a recent letter to Mr. Dearborn, Chairman Nadler has asserted that it would be "truly unprecedented" for the President to claim immunity on behalf of Mr. Dearborn. Letter for Rick Dearborn from Jerrold Nadler, Chairman, Committee on the Judiciary, House of Representatives, at 2 (Sept. 13, 2019) ("Sept. 13 Letter"). But that statement is not correct. In 2007, this Office advised that a senior aide serving in the position of Deputy Chief of Staff for Policy was immune. *See* Letter for Fred F. Fielding, Counsel to the President, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Aug. 1, 2007) (recognizing the testimonial immunity of Karl Rove, Senior Advisor to the President and Deputy Chief of Staff for Policy). In 2014, this Office found that the Director of the White House Office of Political Strategy and Outreach was immune as well. *Immunity of the Assistant to the President*, 38 Op. O.L.C. at *1. During Mr. Dearborn's time working for President Trump, the director of the White House political office actually reported to Mr. Dearborn. Thus, our recognition that Mr. Dearborn served as a senior adviser to the President entitled to testimonial immunity is well grounded in our precedents from prior administrations.

It is inconsequential that Mr. Dearborn is now a private citizen. In *Immunity of the Former Counsel*, we reaffirmed that for purposes of testimonial immunity, there is "no material distinction" between "current and former senior advisers to the President," and therefore, an adviser's departure from the White House staff "does not alter his immunity from compelled congressional testimony on matters related to his service to the President." 43 Op. O.L.C. at *16; *see also Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192–93 (2007). It is sufficient that the Committee clearly seeks Mr. Dearborn's testimony on matters related to his official duties at the White House.

Two business days before the hearing, Chairman Nadler informed Mr. Dearborn that he should nonetheless appear because the Committee plans to ask questions about matters predating the President's time in office. *See* Sept. 13 Letter at 2. Chairman Nadler cited the example of Hope Hicks, a former senior adviser to the President who appeared for a transcribed interview before the Committee on June 19, 2019. Because Ms. Hicks qualified for testimonial immunity, she did not answer questions related to her White House service, but she did appear and answer questions about matters related to the 2016 presidential campaign and the presidential transition.

In marked contrast with the case of Ms. Hicks, the Committee here has noticed a public hearing and repeatedly made clear that its interest in Mr. Dearborn stems from his time at the White House. The Committee entitled its hearing "Presidential Obstruction of Justice and Abuse of Power." There could not be any "*presidential* obstruction" or "abuse of *power*" before President Trump became President and assumed the powers of his office. As discussed above, Chairman Nadler also explained, when he issued the subpoena, that the Committee sought to question Mr. Dearborn about his involvement in particular events during his time in the White House. The Committee's prior notice concerning the subject of the hearing was not just a matter of convenience, but also served the legal requirement of providing the witness with "fair notice of the scope of the inquiry." *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 90 (1986); *see also Barenblatt v. United States*, 360 U.S. 109, 124 (1959) (witness must be "sufficiently apprised of 'the topic under inquiry'"). In view of these precedents, and the Committee's prior public statements, we do not believe that the Committee may avert an imminent assertion of testimonial immunity by purporting to alter the subject matter of the public hearing at the last minute.*

For these reasons, we conclude that Mr. Dearborn may not be compelled to testify before the Committee about the events described in the Special Counsel's report. The President may lawfully direct him not to appear on September 17, and he may not be penalized for following such a direction. *See Immunity of the Former Counsel*, 43 Op. O.L.C. at *19–21.

Please let us know if we may be of further assistance.

Steven A. Engel
Assistant Attorney General

* In light of this conclusion, we do not address whether or how testimonial immunity would apply had the Committee sought to compel an appearance at a congressional hearing in order to address multiple subjects, only some of which related to a former White House adviser's official duties.

**U.S. Department of Justice**

Office of Legal Counsel

Office of the Assistant Attorney General

*Washington, D.C. 20530*

September 16, 2019

Pat A. Cipollone
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Cipollone:

On August 14, 2019, the Committee on the Judiciary of the House of Representatives issued a subpoena seeking to compel Robert Porter, former Assistant to the President and Staff Secretary, to testify on September 17 at a hearing entitled "Presidential Obstruction of Justice and Abuse of Power." You have asked whether the Committee may compel Mr. Porter to testify. We conclude that he is absolutely immune from compelled congressional testimony in his capacity as a former senior adviser to the President.

Soon after service of the subpoena, the Committee Chairman, Jerrold Nadler, announced that Mr. Porter had been subpoenaed because he "was prominently featured" in volume II of the report issued by Special Counsel Robert S. Mueller, III, particularly in descriptions of President Trump allegedly "directing then-White House Counsel Don McGahn to fire the Special Counsel." Press Release, House Judiciary Committee Subpoenas Rob Porter (Aug. 26, 2019); *see also* Press Release, House Judiciary to Consider Procedures Regarding Whether to Recommend Impeachment (Sept. 9, 2019) (stating that the Committee subpoenaed Mr. Porter in connection with the President's alleged "efforts to obstruct the Special Counsel's investigation"). The subpoena plainly seeks testimony concerning matters occurring during and relating to Mr. Porter's service as a presidential aide.

The Committee's subpoena is one of several that House committees have recently issued to current and former senior presidential aides. The Department of Justice has for decades taken the position, and this Office recently reaffirmed, that "Congress may not constitutionally compel the President's senior advisers to testify about their official duties." *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *1 (May 20, 2019) ("*Immunity of the Former Counsel*"). This testimonial immunity is rooted in the separation of powers and derives from the President's status as the head of a separate, co-equal branch of government. *See id.* at *3–7. Because the President's closest advisers serve as his alter egos, compelling them to testify would undercut the "independence and autonomy" of the Presidency, *id.* at *4, and interfere directly with the President's ability to faithfully discharge his responsibilities. Absent immunity, "congressional committees could wield their compulsory power to attempt to supervise the President's actions, or to harass those advisers in an effort to influence their conduct, retaliate for actions the committee disliked, or embarrass and weaken the President for partisan gain." *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. __, *3

(July 15, 2014) ("*Immunity of the Assistant to the President*"). Congressional questioning of the President's senior advisers would also undermine the independence and candor of executive branch deliberations. *See Immunity of the Former Counsel*, 43 Op. O.L.C. at *5–7. Administrations of both political parties have insisted on the immunity of senior presidential advisers, which is critical to protect the institution of the Presidency. *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999) (A.G. Reno).

Mr. Porter qualifies as a senior presidential adviser entitled to immunity. Our opinions have recognized that this immunity extends to "those trusted members of the President's inner circle 'who customarily meet with the President on a regular or frequent basis,' and upon whom the President relies directly for candid and sound advice." *Immunity of the Assistant to the President*, 38 Op. O.L.C. at *2 (quoting Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* at 7 (Feb. 5, 1971)). Your office has informed us that Mr. Porter served as one of the President's closest aides during his tenure at the White House. He spent substantial amounts of time with the President on a daily basis and traveled with him regularly. Mr. Porter was also substantively involved in policy areas that are high priorities for the President. Indeed, Mr. Porter's close relationship with the President was recognized in the media as well. *See, e.g.*, Julie Hirschfeld Davis & Maggie Haberman, *Ex-Aide Is Called in Trump Inquiry*, N.Y. Times, Aug. 27, 2019, at A16 (Mr. Porter's "job as staff secretary, which included controlling every piece of official paper the president saw, entailed near-constant presence around Mr. Trump"); Maggie Haberman, *Trump Pines for an Aide Who Resigned*, N.Y. Times, Mar. 27, 2018, at A13 ("Mr. Porter also served as a de facto deputy chief of staff for policy, playing a key role on issues like tariffs, and Mr. Trump spent as much as two hours a day with him."). In short, Mr. Porter was an important member of the President's inner circle of immediate advisers.

It is inconsequential that Mr. Porter is now a private citizen. In *Immunity of the Former Counsel*, we reaffirmed that for purposes of testimonial immunity, there is "no material distinction" between "current and former senior advisers to the President," and therefore, an adviser's departure from the White House staff "does not alter his immunity from compelled congressional testimony on matters related to his service to the President." 43 Op. O.L.C. at *16; *see also Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192–93 (2007). It is sufficient that the Committee clearly seeks Mr. Porter's testimony on matters related to his official duties at the White House.

For these reasons, we conclude that Mr. Porter may not be compelled to testify before the Committee about the events described in the Special Counsel's report. The President may lawfully direct him not to appear on September 17, and he may not be penalized for following such a direction. *See Immunity of the Former Counsel*, 43 Op. O.L.C. at *19–21.

Please let us know if we may be of further assistance.

Steven A. Engel
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

September 16, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

I write concerning the subpoena issued by the Committee on the Judiciary (the "Committee") to Corey Lewandowski on August 14, 2019. The subpoena directs Mr. Lewandowski to testify before the Committee on Tuesday, September 17, 2019. I understand that the Committee seeks to question Mr. Lewandowski about events that are described in the Report prepared by Special Counsel Robert S. Mueller, III ("Report"), including Mr. Lewandowski's communications with the President and with senior advisers to the President. As explained below, Mr. Lewandowski's conversations with the President and with senior advisers to the President are protected from disclosure by long-settled principles protecting Executive Branch confidentiality interests and, as a result, the White House has directed Mr. Lewandowski not to provide information about such communications beyond the information provided in the portions of the Report that have already been disclosed to the Committee.

It is a well-established legal principle, rooted in the constitutional separation of powers, that the President's communications seeking advice or information in connection with the discharge of his duties are highly confidential and not ordinarily subject to disclosure. As the Supreme Court explained over forty years ago, "[a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately." *United States v. Nixon*, 418 U.S. 683, 708 (1974). The protections for such Presidential communications include all communications relating to the President's performance of his official duties and responsibilities. *See Nixon v. Administrator of General Services*, 433 U.S. 425, 449 (1977) (Executive Branch confidentiality interests cover "communications in performance of a President's responsibilities") (internal quotation marks and citation omitted). This position is consistent with governing Supreme Court precedent and the long-standing practice of administrations from both parties. *See, e.g., Assertion of Exec. Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 1-2 (1996) (citing *United States v. Nixon* to explain the Presidential communications privilege).

The confidentiality interests protecting Presidential communications are not limited solely to communications between the President and his advisers within the Executive Branch. Rather, a President must frequently consult with individuals outside of the Executive Branch, and it is well settled that those communications are also subject to protection. As the Office of Legal Counsel

has explained, under long-standing precedent, the fact that "communications involve individuals outside the Executive Branch does not undermine the President's confidentiality interests." *Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys*, 31 Op. O.L.C. 1, 5 (2007); *see also* Letter from Pat A. Cipollone, Counsel to the President, to Elijah E. Cummings, Chairman, Committee on Oversight and Government Reform (June 3, 2019) (communications between an individual outside the Executive Branch and the President or senior White House advisers are protected from disclosure).

In addition, the same confidentiality interests extend beyond communications in which the President himself is involved. As the Office of Legal Counsel has explained, "in order for the President and his advisers to make an informed decision, presidential aides must sometimes solicit information from individuals outside the White House and the Executive Branch." *Id.* Accordingly, communications between a President's senior advisers and individuals outside the Executive Branch relating to information or advice that will inform the discharge of the President's responsibilities are equally protected from disclosure. *See also In re Sealed Case*, 121 F.3d 729, 752 (D.C. Cir. 1997) ("Given the need to provide sufficient elbow room for [senior White House] advisers to obtain information from all knowledgeable sources, the privilege must apply both to communications which these advisers solicited and received from others as well as those they authored themselves.").

The Committee has argued that any interest the Executive Branch has in protecting the confidentiality of presidential communications has been waived for matters discussed in the Report. To the contrary, while it is true that the President decided to permit disclosure of portions of the Report that would otherwise be protected by executive privilege, such a disclosure is not a waiver of any privilege or protection with respect to additional information on the same subject matters not contained in the Report. Allowing those who have had confidential conversations with the President to appear before Congress to answer additional questions relating to their communications with the President and with the President's senior advisers would create profound separation of powers concerns and would threaten the ability of future Presidents to protect the confidentiality of advice they receive and the communications their advisers have with others in order to advise the President.

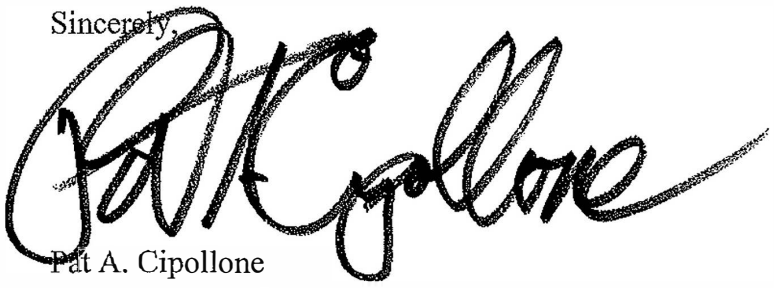
Thus, in light of the long-settled principles discussed above, and in order to protect the prerogatives of the Office of President, the White House has directed Mr. Lewandowski not to discuss the substance of any conversations he had with the President or senior Presidential advisers about official government matters, unless the information is expressly contained in the Report. We are adhering to the well-established lines protecting the confidentiality of presidential communications to ensure that future Presidents can effectively execute the responsibilities of the Office of President.

We also understand the Committee may question Mr. Lewandowski about discussions he had with the President-elect during the presidential transition. Discussions during this period may relate to decisions the President-elect would be making once he assumed office. Accordingly, Mr. Lewandowski's responses to specific questions relating to this period may implicate deliberative process privilege and other Executive Branch confidentiality interests.

In order to preserve the President's ability to assert executive privilege over the information discussed above, and to protect the prerogatives of the Office of President, a member of my office will attend the hearing on September 17 and will advise, as necessary, with regard to specific questions that implicate privileged matters.

Please do not hesitate to contact me or Mike Purpura if you have any questions or would like to discuss this matter further.

Sincerely,



Pat A. Cipollone
*Counsel to the President*

cc: The Honorable Doug Collins, Ranking Member

THE WHITE HOUSE

WASHINGTON

September 16, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

I write concerning the subpoenas issued by the Committee on the Judiciary (the "Committee") to Rick Dearborn and Robert Porter on August 14, 2019. The subpoenas direct Mr. Dearborn and Mr. Porter to testify before the Committee on Tuesday, September 17, 2019. As you are aware, Mr. Dearborn and Mr. Porter were senior advisers to the President in the White House, holding the titles of Assistant to the President and Deputy Chief of Staff for Policy Implementation, and Assistant to the President and Staff Secretary, respectively. Based on the title of the Committee's hearing, and a press release you issued, it has long been clear that the purpose of the subpoenas is to seek testimony from Mr. Dearborn and Mr. Porter concerning their service in the White House. *See* Press Release, Rep. Jerrold Nadler (Aug. 15, 2019). As you know, and as explained further below, in accordance with long-standing, bipartisan precedent, senior advisers to the President such as Mr. Dearborn and Mr. Porter may not be compelled to testify before Congress with respect to matters related to their service as senior advisers to the President. Accordingly, in keeping with settled precedent and to protect the prerogatives of the Office of President for the future, the President has directed Mr. Dearborn and Mr. Porter not to appear at the hearing scheduled for Tuesday, September 17, 2019. *See, e.g.*, *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __ (May 20, 2019). Nothing in the Committee's eleventh-hour attempt to expand the scope of the hearing without proper notice to include questions for Mr. Dearborn related to his role during the 2016 campaign alters Mr. Dearborn's immunity from being compelled to appear under the existing subpoena.

The Department of Justice (the "Department") has advised me that Mr. Dearborn and Mr. Porter are absolutely immune from compelled congressional testimony with respect to matters related to their service as senior advisers to the President. *See* Letters to Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (September 16, 2019). The Department has long taken the position—across administrations of both political parties—that "the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee." *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 191 (2007) (quoting *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno)); *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996). That immunity arises from the President's position as head of the Executive Branch and from Mr. Dearborn's and Mr. Porter's

former positions as senior advisers to the President, specifically Deputy Chief of Staff for Policy Implementation and Staff Secretary, respectively.

As the Department has recognized, "[w]hile a senior presidential adviser, like other executive officials, could rely on executive privilege to decline to answer specific questions at a hearing, the privilege is insufficient to ameliorate several threats that compelled testimony poses to the independence and candor of executive councils." *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *6 (May 20, 2019). "[C]ompelled congressional testimony 'create[s] an inherent and substantial risk of inadvertent or coerced disclosure of confidential information,' despite the availability of claims of executive privilege with respect to the specific questions asked during such testimony." *Id.* (quoting *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 O.L.C. Op. at *4). In addition, the threat of compelled interrogation about confidential communications with the President or his senior staff "could chill presidential advisers from providing unpopular advice or from fully examining an issue with the President or others." *Id.* Furthermore, given the frequency with which testimony of a senior presidential adviser would fall within the scope of executive privilege, compelling such an adviser's appearance is unlikely to promote any valid legislative interests. *Id.* at *6-7. Compelling senior presidential advisers to testify in situations where they must repeatedly cite executive privilege and decline to provide answers would be inefficient and contrary to good-faith governance. *See id.* at *7. Finally, the constitutional immunity of current and former senior advisers to the President exists to protect the institution of the Presidency, and as stated by former Attorney General Janet Reno, "may not be overborne by competing congressional interests." *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 5.

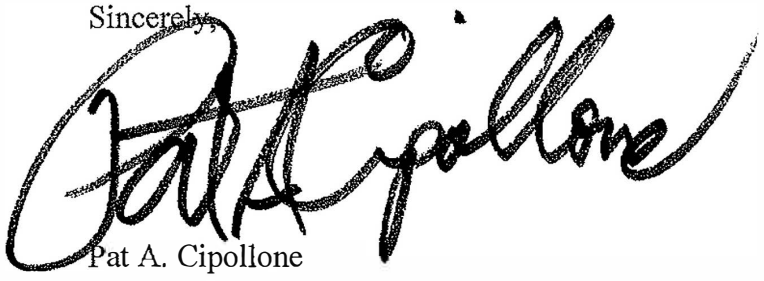
As noted above, the title of the hearing scheduled for September 17, along with the press release issued on the same day as the subpoenas, has long made clear that the purpose of the hearing was to seek testimony from Mr. Dearborn and Mr. Porter concerning their service as senior advisers to the President. *See* Press Release, Rep. Jerrold Nadler (Aug. 15, 2019). Accordingly, the immunity principles described above apply, and the Department has concluded that Mr. Dearborn and Mr. Porter are immune from being compelled to testify.

A last-minute maneuver by the Committee purporting to change the scope of testimony sought from Mr. Dearborn does not change that analysis. I understand that, late on Friday, September 13, 2019—two business days before the hearing—you contacted Mr. Dearborn's counsel and informed him for the first time that the Committee also intended to question Mr. Dearborn about his work on the presidential campaign of 2016. In fact, based on conversations my staff has had with Mr. Dearborn's counsel, I understand that in communications prior to September 13, Committee staff repeatedly emphasized to Mr. Dearborn's counsel that the subpoena to Mr. Dearborn sought information concerning Mr. Dearborn's service in the White House and never mentioned anything about the 2016 campaign until September 13. In any event, this cannot alter the fact that the primary purpose of the subpoena is, and always has been, securing testimony from Mr. Dearborn concerning his time as a senior adviser to the President. The Department has determined that, despite the Committee's eleventh-hour effort to expand the scope of the hearing, under the facts presented here, Mr. Dearborn remains immune from compelled testimony.

Because of the constitutional immunity that protects senior advisers to the President from compelled congressional testimony, and in order to protect the prerogatives of the Office of President, the President has directed Mr. Dearborn and Mr. Porter not to appear at the Committee's scheduled hearing on Tuesday, September 17, 2019. The long-standing principle of immunity for senior advisers to the President is firmly rooted in the Constitution's separation of powers and protects the core functions of the Presidency. We are adhering to this well-established precedent in order to ensure that future Presidents can effectively execute the responsibilities of the Office of President. I also attach the letter opinions provided by the Department regarding Mr. Dearborn's and Mr. Porter's immunity.

Thank you for your attention to this matter. Please do not hesitate to contact me or Mike Purpura if you have any questions.

Sincerely,



Pat A. Cipollone
*Counsel to the President*

cc: The Honorable Doug Collins, Ranking Member